

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

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**Tu13c****STAFF REPORT: APPEAL**
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of Los Angeles

LOCAL DECISION: Approval with Conditions

APPEAL NUMBER: A-5-VEN-05-259

APPLICANT: City of Los Angeles Department of Public Works

APPELLANTS: James Murez, John Davis, and Coastal Commission Executive Director, Peter Douglas

PROJECT LOCATION: Northwest corner of intersection of North Venice Boulevard and Abbot Kinney Boulevard, Venice, City of Los Angeles.

PROJECT DESCRIPTION: Appeal from decision of the City of Los Angeles approving Local Coastal Development Permit No. 04-01 for the vacation of a portion of the public right-of-way.

SUBSTANTIVE FILE DOCUMENTS:

1. City of Los Angeles certified Land Use Plan for Venice, 6/14/01.
2. City of Los Angeles Specific Plan for Venice, Ordinance No. 172,897, 12/22/99.
3. City of Los Angeles Local Coastal Development Permit No. 04-01.
4. City of Los Angeles Street Vacation File No. VAC-E1400779 (Council File No. 01-2183).
5. Coastal Development Permit 5-90-664 & amendments (Caltrans & City of Los Angeles).
6. Coastal Development Permit Appeal File No. A-5-91-486 (Haseko-Tekno Dev.).

SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission, after public hearing, determine that a **SUBSTANTIAL ISSUE EXISTS** with respect to the City-approved project's conformance with the Chapter 3 policies of the Coastal Act because the vacation of part of the right-of-way could adversely affect coastal resources and public access to the shoreline along North Venice Boulevard, a major coastal access route. **See Page Five for the motion** to make the substantial issue determination.

I. APPELLANTS' CONTENTIONS

City of Los Angeles Local Coastal Development Permit No. 04-01 approves the vacation of a portion of the public right-of-way at the northwest corner of intersection of North Venice Boulevard and Abbot Kinney Boulevard (Exhibit #2). The vacated portion of the right-of-way is about 4,500 square feet in area¹ (Exhibit #3). The local coastal development permit does not approve any physical development. The owner of the corner lot and commercial office building that abuts the vacated portion of the right-of-way currently uses the land as part of the parking area that serves the office building that he owns (1656 Abbot Kinney Boulevard).

James Murez, John Davis, and Coastal Commission Executive Director Peter Douglas have appealed the City's action to approve the local coastal development permit that is required for the vacation of part of the public right-of-way.

The grounds for the appeal by the Executive Director are:

The project approved by the local coastal development permit involves the vacation of a portion of Venice Boulevard, a major coastal access route that is subject to Commission-approved Coastal Development Permit 5-90-664 and subsequent amendments. The vacation of a part of this public right-of-way could adversely affect coastal resources and/or public access to the shoreline. For example, this segment of public right-of-way may be used to provide additional public parking, enhanced transit service or for a future expansion of the existing street system. [Coastal Act Sections 30210, 30211, 30212.5, 30213 and 30223] The right-of-way may also provide an area landscaping to enhance the visual resources of the area and to improve air quality. [Coastal Act Sections 30251, 30252 and 30253.] Therefore, this local coastal development permit action merits closer scrutiny by the Commission.

The grounds for the appeal by James Murez are attached to this report as Exhibit #4, and include the following:

- The intersection of North Venice Boulevard and Abbot Kinney Boulevard, referred to by the Coastal Conservancy as "the Ceremonial Gateway to Venice," should be retained in public ownership and landscaped in order to enhance the visual quality of the streetscape.
- The City's action sets a bad precedent as the vacation of any portion of the North Venice Boulevard right-of-way would lead to additional vacations where the right-of-way abuts other properties along the street, thus significantly reducing the public area available for street trees and other landscaping (i.e., a domino effect).
- The large street trees (sycamore) that are already growing within the public right-of-way may be removed if their canopies extend beyond the right-of-way when they reach maturity. Therefore, the width of the right-of-way should not be reduced by any vacations.

¹ The City's staff report states that the area to be vacated is 3,500 square feet in area.

- The City's action violates the landscaping plan approved by Coastal Commission Coastal Development Permit 5-90-664, which was issued to the State Department of Transportation for the realignment of Venice Boulevard in the early 1990s.
- The City's action violates the provisions of the certified Land Use Plan (LUP) for Venice that relate to the visual enhancement of Venice Boulevard (the Ceremonial Gateway to Venice) and the surrounding area.
- The City's action violates the visual resource protection provisions set forth by Section 30251 of the Coastal Act.
- The City's action does not protect the community of Venice, a popular visitor destination, as required by Section 30253(5) of the Coastal Act.

The grounds for the appeal by John Davis are attached to this report as Exhibit #5, and include the following:

- The local coastal development permit is invalid because the City does not have a certified Local Coastal Program (LCP) under which the Coastal Commission has delegated permitting authority.
- The City's action constitutes an unlawful gifting of public property to a private entity prohibited by Article 16 of the California Constitution.
- The City's action violates Coastal Act Section 30604 because it prejudices the ability of the local government to prepare a Local Coastal Program (LCP) in compliance with Chapter 3.
- The action does not comply with the requirements of the California Environmental Quality Act (CEQA).
- The City violated the Brown Act.
- The City's action is inconsistent with Chapter 3 policies 30251 and 30254 and violates numerous other provisions of the Coastal Act and the State Regulations.

II. LOCAL GOVERNMENT ACTION

On October 18, 2002, the Los Angeles City Council conditionally approved the street vacation finding that the area to be vacated is not needed for present or prospective public use. Since the City Council action did not include a local coastal development permit approval for the vacation, Commission staff reminded the City (in a letter dated October 2, 2003) that the vacation of a public right-of-way falls within the Coastal Act's definition of "development" and therefore requires a coastal development permit. Attached to the October 2, 2003 letter was a copy of a similar letter dated November 20, 1998 that Commission staff had sent to the City in regards to the vacation of public rights-of-way in the coastal zone.

In 2004, the City of Los Angeles Department of Public Works began processing a local coastal development permit for the vacation of a portion of the public right-of-way situated at the northwest corner of intersection of North Venice Boulevard and Abbot Kinney Boulevard (Exhibit #2). On December 17, 2004, the City of Los Angeles Bureau of Engineering (Public Works Department) held a public hearing for Local Coastal Development Permit No. 04-01 for the proposed vacation.

On May 2, 2005, the City of Los Angeles Bureau of Engineering issued a Notice of Decision approving Local Coastal Development Permit No. 04-01 and incorporating the conditions of the City Council's 2002 approval of the vacation (Exhibit #6).

James Murez and Steve Freedman appealed the City's May 2, 2005 approval of the local coastal development permit to the City of Los Angeles Board of Public Works. On June 27, 2005, the Board of Public Works denied the appeal and upheld the approval of Local Coastal Development Permit No. 04-01 for the vacation.

On June 28, 2005, the Commission's South Coast District office in Long Beach received the City's Notice of Final Action for its approval of Local Coastal Development Permit No. 04-01 and established the twenty-working day appeal period. On June 29, 2005, in anticipation of an appeal to the Commission, the City sent a copy of its local coastal development permit file to the Commission's Long Beach office. During the appeal period, which ended on July 27, 2005, the Commission received three appeals. James Murez filed the first appeal on July 11, 2005. The other two appeals were filed on July 27, 2005.

III. APPEAL PROCEDURES

Section 30600(b) of the Coastal Act provides that prior to certification of its Local Coastal Program (LCP), a local jurisdiction may, with respect to development within its area of jurisdiction in the coastal zone and consistent with the provisions of Sections 30604, 30620 and 30620.5, establish procedures for the filing, processing, review, modification, approval or denial of a coastal development permit. Pursuant to this provision, the City of Los Angeles developed a permit program in 1978 to exercise its option to issue local coastal development permits.

Sections 13301-13325 of Title 14 of the California Code of Regulations provide procedures for issuance and appeals of locally issued coastal development permits. Section 30602 of the Coastal Act allows *any* action by a local government on a coastal development permit application evaluated under Section 30600(b) to be appealed to the Commission. The standard of review for such an appeal is the Chapter 3 policies of the Coastal Act. [Cal. Pub. Res. Code §§ 30200 and 30604.]

After a final local action on a local coastal development permit application, the Coastal Commission must be noticed within five days of the decision. After receipt of such a notice which contains all the required information, a twenty working-day appeal period begins during which any person, including the applicant, the Executive Director, or any two members of the Commission, may appeal the local decision to the Coastal Commission. [Cal. Pub. Res. Code § 30602.]

Any appeal of the local action is then analyzed to determine if a substantial issue exists as to conformity with Chapter 3 of the Coastal Act (Sections 30200-30265.5). [Cal. Pub. Res. Code § 30625(b)(1).] Unless the Commission finds that the appeal raises no substantial issue, the Commission then holds a public hearing in which it reviews the coastal development permit as a de novo matter. [Cal. Pub. Res. Code §§ 30621 and 30625.]

At this point, the Commission may decide that the appellants' contentions raise no substantial issue as to conformity with Chapter 3 of the Coastal Act, in which case the action of the local government stands. Or, the Commission may find that a substantial issue exists with respect to the conformity of the action of the local government with Chapter 3 of the Coastal Act if it finds that the appeal raises a significant question regarding consistency with the Chapter 3 policies of the Coastal Act. If the Commission finds that a substantial issue exists, then the hearing will be continued as a de novo permit request. Section 13321 of the Coastal Commission regulations specifies that de novo actions will be heard according to the procedures outlined in Sections 13114 and 13057-13096 of the Commission's regulations.

IV. DUAL PERMIT JURISDICTION

Within the areas specified in Section 30601, which is known in the City of Los Angeles permit program as the *Dual Permit Jurisdiction* area, the Coastal Act requires that the development which receives a local coastal development permit also obtain a "dual" coastal development permit from the Coastal Commission. For projects located inland of the areas identified in Section 30601 (*Single Permit Jurisdiction*), the City of Los Angeles local coastal development permit is the only coastal development permit required. The proposed development is not located within the *Dual Permit Jurisdiction*.

V. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that **a substantial issue exists** with respect to whether the local government's approval of the project is consistent with the provisions of Chapter 3 of the Coastal Act (commencing with Section 30200), pursuant to PRC Section 30625(b)(1).

Staff recommends a **NO** vote on the following motion:

MOTION: *"I move that the Commission determine that Appeal No. A-5-VEN-05-259 raises **no** substantial issue with respect to conformity of the local approval with the policies of Chapter 3 of the Coastal Act."*

Failure of the motion will result in a de novo hearing on the application and adoption of the following resolution and findings. A majority of the Commissioners present is required to pass the motion.

Resolution to Find Substantial Issue for Appeal A-5-VEN-05-259

The Commission hereby finds that Appeal No. **A-5-VEN-05-259** presents a substantial issue with respect to conformity of the local government approval with the Chapter 3 policies of the Coastal Act.

VI. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description

The project approved by Local Coastal Development Permit No. 04-01 is the vacation of a portion of the public right-of-way situated at the northwest corner of intersection of North Venice Boulevard and Abbot Kinney Boulevard (Exhibit #3). The local coastal development permit does not approve any physical development, but the owner of the abutting corner lot claims to hold title to the underlying land over which the right-of-way would be vacated and intends to use it for private parking and landscaping after the vacation of the right-of-way is finalized. This landowner is currently using the right-of-way on his lot as part of the parking area that serves the office building on his property at 1656 Abbot Kinney Boulevard. The vacated areas are situated between the existing public sidewalk and the abutting lot.

B. Factors to be Considered in Substantial Issue Analysis

Section 30625(b)(1) of the Coastal Act states that the Commission shall hear an appeal of a local government action carried out pursuant to Section 30600(b) unless it finds that no substantial issue exists as to conformity with Chapter 3 of the Coastal Act. The term "*substantial issue*" is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission's regulations simply indicates that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." In previous decisions on appeals, the Commission has been guided by the following factors.

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the relevant provisions of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and,
5. Whether the appeal raises local issues, or those of regional or statewide significance.

Staff is recommending that the Commission find that **a substantial issue exists** with respect to whether the local government action conforms with the provisions of Chapter 3 of the Coastal Act for the reasons set forth below. Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

C. Substantial Issue Analysis

As stated in Section III of this report, the grounds for an appeal of a coastal development permit issued by the local government prior to certification of its Local Coastal Program (LCP) are the Chapter 3 policies of the Coastal Act. Any such local government coastal development permit may be appealed to the Commission. The Commission shall hear an appeal unless it determines that the local government action raises no substantial issue as to conformity with Chapter 3 policies of the Coastal Act. In this case, staff has recommended that a substantial issue does exist in the local government's approval of the project.

1. Project History

The portion of the right-of-way that is subject to the City's local coastal development permit action is the portion at the northwest corner of the intersection of North Venice Boulevard and Abbot Kinney Boulevard (Exhibit #3). The portion of the Abbot Kinney Boulevard right-of-way being vacated is five feet deep and about ninety feet long. The portion of the North Venice Boulevard right-of-way being vacated is much larger, about forty feet deep and about 95 feet long. The vacated areas are situated between the existing public sidewalk and the abutting lot that occupies the corner of the intersection.

The City considers the portion of the North Venice Boulevard right-of-way being vacated as excess land that became unnecessary for public use in the early 1990s when the State Department of Transportation (Caltrans) realigned North and South Venice Boulevard (within the existing Venice Boulevard right-of-way) and eliminated portions of a widened median strip that was a relic of the old streetcar system. The project design, including landscaping, was the result of a series of community meetings and agreements between the City of Los Angeles, which was accepting ownership of the street, and several government agencies (e.g., Caltrans, Coastal Commission and the Coastal Conservancy). The general public and non-government groups (e.g. Venice Action Committee) were also involved in formulating the plan for the Venice Boulevard right-of-way. The plan identified both interim and permanent public parking in the right-of-way, ten-foot wide sidewalks, and median landscaping that included large street trees (sycamores) to mark the "Gateway to Venice."

On September 13, 1990, the Commission approved Coastal Development Permit 5-90-664 for the public works project. Coastal Development Permit 5-90-664 addressed primarily the issue of the preservation of public parking within the Venice Boulevard right-of-way (both within the median and along the sides of the right-of-way). During that project, the roadways and medians were realigned leaving some of the outside portions of the right-of-way undeveloped (i.e., the right-of-way area beyond/outside of the paved street and sidewalk). Coastal Development Permit 5-90-664 requires that certain portions of the undeveloped Venice Boulevard right-of-way be preserved for public parking so that the project would not result in any net loss of the public parking that supports coastal access. Commission staff is investigating whether a final landscape plan for the entire right-of-way was ever approved as part of Coastal Development Permit 5-90-664.

2. Coastal Access

The City determined that the vacated area is not needed for any public use, including parking. But the fact that the site is currently being used for parking challenges this conclusion. The

coastal access issue is whether the vacated area should be used for public parking or private parking (or perhaps, only for landscaping). Since the proposed project involves a public area that could potentially provide additional public parking, Commission staff is recommending that a substantial issue exists in regards City's action because the vacation of a part of this public right-of-way could adversely affect public access to the shoreline and recreation. The City's approval raises a substantial issue with the following Chapter 3 access and recreation policies:

Section 30210

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212.5

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30213

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30223

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Other potential uses of the vacated areas include landscaping, enhanced transit service (e.g. a bus stop) or a future expansion of the existing street system. Even though the City has determined that it does not need the vacated right-of-way areas for any public use, the local coastal development permit action approving the vacation merits closer scrutiny by the Commission.

3. Visual Resources

Commission staff is also recommending that a substantial issue exists in regards City's action because the vacation of a part of this public right-of-way could adversely affect visual

resources by limiting the ability of the City to use the right-of-way to provide landscaping that would beautify the intersection, improve air quality and enhance visual resources. Therefore, the City's approval raises a substantial issue with the following Chapter 3 access and recreation policies:

Section 30251

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Section 30253(5)

New development shall: (5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

4. A Procedural Issue

The City's action raises a procedural issue that is independent of the Chapter 3 issues. Venice Boulevard is a major coastal access route that is subject to Commission-approved Coastal Development Permit 5-90-664 and subsequent amendments. The City approval states that the local coastal development permit can override the landscaping requirements of Coastal Development Permit 5-90-664. This is incorrect, as only the Commission can change the provisions of a Commission-issued permit. This procedural issue does not raise a substantial issue with regards to consistency with Chapter 3. Moreover, since the Commission concludes that the local approval presents a substantial issue for other reasons, the de novo portion of the appeal can clarify whether any approved development amends the previously approved Commission-issued coastal development permit.

5. The Five Factors

Applying the five factors listed in the prior section further clarifies that the appeal raises a "substantial" issue with respect to Chapter 3. The first factor is the degree of factual and legal support for the local government's decision that the development is consistent with Chapter 3 of the Coastal Act. The City's findings do not provide a sufficient explanation of how the approved project complies with and carries out the relevant policies of the Coastal Act [Coastal Act Sections 30210, 30211, 30212.5, 30213, 30223, 30251, 30252 and 30253] for the reasons specified above.

The second factor is the scope of the development approved by the local government. The scope of the approved development is the transfer of property. The local coastal development permit approves no physical development, although the vacation of portions of the public right-

of-way could ultimately result in additional private development being situated closer to the existing public sidewalk. Private encroachments into the area currently designated as public right-of-way could result in adverse impacts to public access and visual resources.

The third factor is the significance of the coastal resources affected by the decision. The character of the Venice area is the main resource affected by the proposed project. All Venice neighborhoods may be affected indirectly by the precedential nature of the street vacation being approved by the City. Thus, the coastal resources affected are significant.

The fourth factor is the precedential value of the local government's decision for future interpretations of its LCP. This is designed to avoid leaving decisions in place that could create a precedent for how the relevant provision of the LCP is to be interpreted, assuming the local government has a certified LCP. In this case, the City does not have a certified LCP, but it does have a certified land Use Plan (LUP) for the Venice area. These appeals raise a substantial issue in regards to the City's interpretation of the following policies of the certified Venice LUP:

- **Policy I. C. 9. Public Rights-of-Way.** *Public rights-of-way in the Venice Coastal Zone shall be reserved for public transportation uses including use by private vehicles, pedestrians and bicyclists. Uses that do not interfere with coastal access, transportation and visual quality may be permitted, subject to a discretionary review by means of a coastal development permit. Vacations of public rights-of-way shall not be permitted in the area between the first public road and the sea, Ballona Lagoon or any canal except for public purposes consistent with all applicable local, state and federal laws.*

- **Policy V. A. 5. Streetscapes.** *Streetscape improvements throughout the Venice Coastal Zone shall be maintained and enhanced to enhance pedestrian activity and contribute to a high quality of life and visual image for residents and visitors. Public and private developments within the Venice Coastal Zone shall be required to include elements that will contribute to and enhance streetscape improvements in accordance with a Venice Coastal Zone streetscape plan.*

The final factor is whether the appeals raise local issues, or those of regional or statewide significance. The appeal raises a primarily localized issue related to a street intersection in Venice. However, the protection of community character in an area that is a tourist destination for people all over the state (and beyond) rises to statewide significance.

D. Responses to Appellants' Other Contentions

The previous section assessed the appeal under the applicable standard of review – whether it raised a substantial issue as to conformity with Chapter 3 of the Coastal Act. The appellants have also raised several specific grounds for the appeals that are not directly relevant to that standard. Nevertheless, the Commission responds to the appellants' contentions below.

- The local coastal development permit is invalid because the City does not have a certified Local Coastal Program (LCP) under which the Coastal Commission has delegated permitting authority.

- The City's action constitutes an unlawful gifting of public property to a private entity prohibited by Article 16 of the California Constitution.
- The action does not comply with the requirements of the California Environmental Quality Act (CEQA).
- The City violated the Brown Act.

These contentions do not raise an issue in regards to consistency of the local decision with the policies of Chapter 3. The City of Los Angeles issues local coastal development permits without a certified LCP pursuant to Section 30600(b) of the Coastal Act (See Section III on Page Four). Local Coastal Development Permit No. 04-01 was approved under Section 30600(b) of the Coastal Act. In regards to CEQA and the Brown Act, it is not the Commission's role to resolve conflicts over compliance with these laws. The Commission has a limited appellate authority/jurisdiction as defined by Section 30625(b). The Commission is not a judicial body of general jurisdiction, as its review is limited to assessing conformity with Chapter 3. The Brown Act and the California Environmental Quality Act are not within Chapter 3. The appellant John Davis has recourse in the State courts of general jurisdiction. The Commission does note, however, that the Brown Act, Cal. Gov't Code §§ 54950-963, does not apply to State agencies. Cf. Cal. Gov't Code §§ 54951 (defining "local agency" for purposes of the Brown Act) and 54952 (defining "legislative body" for purposes of the Brown Act).